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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

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In the matter of:

Michael J. Wilson and
Heather A. Wilson,

Debtors.

Case No: BK-09-10652-BAM
Chapter 13

Date: June 25, 2009
Time: 3:30 p.m.

**MOTION TO VALUE DEBTORS' PRINCIPAL RESIDENCE AND AVOID WHOLLY
UNSECURED LIEN(S) ENCUMBERING SAME, TO MODIFY THE RIGHTS OF
LIENHOLDERS AND OBJECTION TO LIENHOLDERS'
PROOF(S) OF CLAIM, IF ANY**

Come Now Debtors, Michael J. Wilson and Heather A. Wilson, by and through their legal counsel, David M. Crosby, Esq., of the law firm Crosby & Associates, who respectfully move this Court to value Debtors' principal residence, determine the junior lien of Litton Loan Servicing LP to be wholly unsecured, to avoid said wholly unsecured lien and to modify the rights of said creditor accordingly including determining the claim (pursuant to proof(s) of claim which such lienholder may file or have filed) to be unsecured where there is insufficient equity in the residence to secure more than the first lien.

This Motion is brought pursuant to 11 U.S.C. §502(a), §506(a), §1322(b)(2), and Bankruptcy Rules 3012 and 9014, the Points and Authorities set forth below and

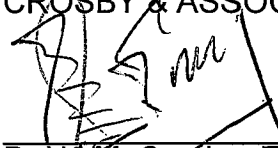
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all documents and pleadings on file herein.

Dated this 19th day of May, 2009.

CROSBY & ASSOCIATES

By:


David M. Crosby, Esq.
Attorney For Debtors

POINTS AND AUTHORITIES

I.

STATEMENT OF FACTS

1. Debtors filed a Chapter 13 petition in the United States Bankruptcy Court, District of Nevada on January 19, 2009.

2. On the date of the petition, Debtors were the owners of real property used as their principal residence known and described as 3321 Perching Bird Lane, North Las Vegas, NV 89084 (Exhibit "1") legally described as follows:

Lot 54 in Block 2 of Astoria at Aliante - Parcel 20, as shown by map thereof on file in Book 116 of Plats, Page 23, in the Office of the County Recorder of Clark County, Nevada.

APN: 124-20-213-069

3. The value of said principal residence at the time their Chapter 13 Petition was filed was \$220,000 as set forth more particularly in a written professional appraisal of subject property (Exhibit "2").

4. Said property at the time of filing was subject to the following liens evidenced by Promissory Notes and Deeds of Trust:

First Mortgage: (Exhibit "3")
 Litton Loan Servicing LP \$382,904.88
 P.O. Box 4387
 Houston, TX 77210-4387
 Loan # 0017240771

Second Mortgage: (Exhibit "4")
 Litton Loan Servicing LP \$ 80,982.38
 P.O. Box 4387
 Houston, TX 77210-4387
 Loan # 0017240789

5. As of the date Debtors' Chapter 13 Petition was filed no equity existed in said property above the claim of the first mortgage holder identified above. The claim of the second mortgage holder identified above was wholly unsecured on the date of the Petition and if said property were foreclosed or otherwise sold at auction on that date there would be insufficient proceeds to pay anything to Litton Loan Servicing pursuant to its second lien.

6. Debtors declare that the second claim of Litton Loan Servicing is unsecured and should be reclassified as unsecured to share pro rata with other general unsecured creditors through the debtors' Chapter 13 plan with any proofs of claim filed by it modified accordingly to document the claim as unsecured, and that the second lien filed by Litton Loan Servicing as identified above encumbering subject property be properly avoided by Order of this Court.

II.

LEGAL ARGUMENT

A. A Wholly Unsecured Lien Encumbering Debtor's Principal Residence May be Avoided Because Modification is Authorized/Not Prohibited by 11 U.S.C. § 1322(b)(2).

11 U.S.C. §1322(b)((2) provides in pertinent part:

(b) Subject to subsections (a) and (c) of this section, the plan may—

* * * * *

(2) modify the rights of holders of secured claims, other than a claim secured only by a

1 security interest that is secured by an interest
 2 in real property that is the debtor's principal
 residence,

3 The second claim by Litton Loan Servicing identified above has no security in
 4 Debtors' residence based on the fair market value of the property and as a result are not
 5 a "secured claim" as defined and therefore not restricted by this section.

6 **B. The Claim by Lienholder May be Bifurcated into Secured and Unsecured**
 7 **Claims Pursuant to 11 U.S.C. §506(a).**

8 11 USC§ 506(a)(1) provides in pertinent part:

9 (a)(1) An allowed claim of a creditor secured by a lien on
 10 property in which the estate has an interest, or that is
 11 subject to setoff under section 553 of this title, is a secured
 12 claim to the extent of the value of such creditor's interest in
 13 the estate's interest in such property, or to the extent of the
 14 amount subject to setoff, as the case may be, and is an
 15 unsecured claim to the extent that the value of such
 16 creditor's interest or the amount so subject to setoff is less
 17 than the amount of such allowed claim. Such value shall be
 18 determined in light of the purpose of the valuation and of the
 19 proposed disposition or use of such property, and in
 20 conjunction with any hearing on such disposition

21 In re Zimmer, 313 F.3d 1220, 1221 (9th Cir.2002), accepted what was the
 22 majority view in the various circuits, that a, wholly unsecured lienholder is not entitled
 23 to the protection of 11 U.S.C. §1322(b)(2). The Court stated that a wholly unsecured
 24 lienholder's claim can be modified and reclassified as a general unsecured claim
 25 pursuant to 11 U.S.C. §506(a), despite the anti-modification language in §1322(b)(2).

26 **C. Any Proof of Claim Filed by Named Lienholders Should be Conformed by**
 27 **Order of This Court to any Modification of Their Rights Determined by This**
 28 **Court.**

11 U.S.C. §502 provides that a claim of interest represented by proper Proof of
 Claim filed pursuant to section 501 is deemed allowed unless objected to. Debtors
 herewith have objected to any and all Proofs of Claim which may have been filed by
 Litton Loan Servicing pursuant to its second lien and request that any Proof(s) of Claim
 of same representing such claims be modified accordingly to unsecured claims

1 consistent with the Order of this Court determining Litton Loan Servicing's second claim
2 to be wholly unsecured.

3 **III.**

4 **CONCLUSION**

5 Debtors respectfully request determination of value of Debtors' primary
6 residence to be less than the amount of the first lien and argue that since the second
7 claim of Litton Loan Servicing is wholly unsecured it may be avoided and "stripped off"
8 pursuant to 11 U.S.C. §1322(b)(2) and §506(a); that the said second claim of Litton
9 Loan Servicing be reclassified as a general unsecured claim to be paid pro rata with
10 other general unsecured creditors through the debtors Chapter 13 plan and that any
11 Proofs of Claim of the lienholders be modified accordingly.

12 WHEREFORE, Debtors pray that this Court:

13 1. Determine the value of Debtors' principal residence to be \$220,000 or
14 such other amount as may be less than the balance of the first lienholder as of the date
15 of the Petition; and

16 2. Avoid and extinguish Litton Loan Servicing's second lien pursuant to 11
17 U.S.C. Section 506(a) upon completion of the Debtor's Chapter 13 plan; and

18 3. Reclassify the second claim of Litton Loan Servicing as general unsecured
19 claims to be paid pro rata with other general unsecured creditors through the Debtor,
20 Chapter 13 plan.

21 4. Conform any Proof of Claim filed by Litton Loan Servicing pursuant to its
22 second lien to the unsecured status of said claim as determined by this Court.

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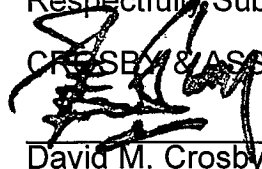
5. Order such other relief as the Court may deem appropriate.

Dated this 19th day of May, 2009.

Respectfully Submitted:

CROSBY & ASSOCIATES

By:


David M. Crosby, Esq.
Attorney for Debtor